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SUMMARY RECORD OF THE 1125th MEETING

Held at Headquarters, New York,
on Wednesday, 25 March 1992, at 10 a.m.

Chairman: Mr. POCAR

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Algeria (CCPR/C/62/Add.1)

1. At the invitation of the Chairman, Mr. Benamara and Mr. Sahraoui (Algeria) took places at the Committee table.

2. Mr. BENAMARA (Algeria), introducing the report, said that following his country's accession to the Covenant, the authorities had wanted to submit a comprehensive report detailing developments in legislation and human rights protection. The aim was to realize the ideals of liberty, equality and justice to which the people of his country aspired.

3. The Constitution of 23 February 1989 had been of historic importance, in that it had launched a process of wide-ranging reform aimed at establishing democratic institutions based on a multi-party system, freedom of the press, the separation of powers and an independent judiciary. Those structural reforms had been given expression at the international level in the country's accession to the principal international human rights instruments, which had required adjustments in domestic legislation.

4. The reform process had been continuing since the submission of the report and human rights protection had been strengthened by the creation of a Ministry of Human Rights, responsible for monitoring respect for human rights and compliance with international instruments. In addition, a national human rights monitoring body had been set up to promote greater awareness of human rights issues.

5. Although the introduction of legal reforms was of great importance, the implementation of new instruments was not always easy, as his country had learned from bitter experience. The disparity between the rapid progress of legislation and the actual situation in the country had led to a crisis. The authorities had been obliged to take the measures necessary to restore the authority of the State, with due respect for the fundamental rights and freedoms of citizens under national and international law.

6. Mr. EL-SHAFEI commended the report, which had been produced in quick time under difficult circumstances, but felt that more information was needed on the period since it had been issued in June 1991. Although the report was objective and comprehensive, it failed to deal with the problems confronting the process of democratization in Algeria and the authorities' efforts to disseminate information concerning rights and obligations under the Covenant. It also failed to address the question of the legal status of the Covenant and whether it was now part of national legislation. It was not clear whether the Covenant would take precedence in cases where its provisions were in conflict with national law.

(Mr. El-Shafei)

7. He welcomed the new Constitution, which embodied guarantees of civil rights and freedoms and the separation of powers, as well as the establishment of the Constitutional Council, while the introduction of a new Ministry of Human Rights was also an important development. Algeria's accession to the various human rights instruments had shown it to be a pioneer in its efforts to increase human rights guarantees. He particularly welcomed the country's accession to the Optional Protocol and its acceptance of the Committee's mandate under article 41 of the Covenant.

8. Unfortunately, the transition from one political system to a different, more democratic, regime had been marred by violence and a reaction to that violence. Breaches of human rights obligations had occurred and the law had been used to justify those breaches through the imposition of a state of emergency. There had been reports of long periods of detention without trial, the use of military courts, instances of torture and misuse of arms by the security forces resulting in deaths and injuries, detention of political opponents and the denial of freedom of speech. How could such actions be consistent with the country's commitment to the provisions of the Covenant?

9. Mr. SADI said that he hoped the dialogue would be mutually beneficial and would enable the Committee to familiarize itself with recent developments in Algeria. The country had made great strides in signing and ratifying a large number of international instruments and had served as a model for other developing countries. However, despite its impeccable preparation and excellent drafting, the report was only of academic interest, since it covered a different era and did not relate to recent events. The Committee needed to focus on those events if it was to understand what was happening in the country.

10. At the beginning of the year, the democratic process had been suspended and the election results cancelled. Those actions could not be reconciled with Algeria's obligations under the Covenant. He recognized the hardships facing the country, but wondered whether any article of the Covenant could be used to justify such action. He also wanted to know whether the United Nations had been duly notified of the state of emergency, its projected duration and the grounds for its introduction.

11. Mr. MAVROMMATIS welcomed Algeria's accession to the Covenant and the Optional Protocol and commended the report for the wealth of information it provided on the steps taken towards democracy and pluralism. Unfortunately, the report had been issued around the time of the declaration of the first state of emergency in June 1991 and did not cover recent events. More information was needed on both the first state of emergency, the introduction and termination of which had been duly notified to the United Nations, and the more recent state of emergency declared in February 1992, of which notification had not yet been given.

(Mr. Mavrommatis)

12. Given that the new Constitution had been drafted shortly before the country's accession to the Covenant, he wondered why the provisions of the Covenant had not been used as a model for the Constitution, particularly those concerning discrimination, an area in which the Constitution was much less thorough than the Covenant. He was aware of the decision of the Constitutional Council giving the Covenant precedence over national legislation, but wondered how that decision could be invoked.

13. He still had doubts concerning the full independence of the judiciary, with regard to such matters as the right to retire, the independence of the body responsible for appointments, and the protection of judges from criminal and civil process. The report referred to the High Council of the Judiciary, but who were its members and why was it headed by the President of the Republic? He also asked for information concerning the composition and appointment of the Constitutional Council. He wondered whether the six-year term accorded to its President was sufficient to guarantee his independence, whether it was renewable and why the term had been set at six years.

14. Following Algeria's transition to a multi-party system, certain anti-democratic parties had abused the democratic process in an effort to seize power. The Algerian Government had responded by declaring a state of emergency. In that connection, he wished to know which articles of the Covenant had been derogated from both during the state of emergency declared in June 1991 and the current state of emergency. Did the state of emergency have any effect, either de facto or de jure, on the right to submit communications under the Optional Protocol?

15. With regard to article 6 of the Covenant, he wished to know which crimes carried the death sentence He was pleased to learn that Algeria was abolishing the death penalty for economic offences. The Algerian delegation should also provide statistics on infant mortality.

16. With respect to article 11 of the Covenant, he wished to know whether the cases referred to in paragraph 125 of the report were subject to criminal prosecution on the grounds of fraud or misrepresentation. It appeared that, although Algeria claimed that civilians could not be imprisoned for debt, there were ways of circumventing the law and imposing custodial sentences.

17. Turning to article 27 of the Covenant, he noted that paragraph 216 of the report stated that "the Algerian people are characterized by homogeneity". However, the rest of that comment on article 27 indicated that Algeria had ethnic, religious and linguistic minorities. Did the Algerian delegation have any additional information regarding the protection of such minorities?

18. Finally, he wished to know what factors and difficulties, other than the states of emergency, impeded the full application of the Covenant.

19. Mr. WENNERGREN said that, while the report was quite comprehensive and informative, it contained very little information about the difficulties Algeria had encountered in applying the various articles of the Covenant. Chapter 4 of the Algerian Constitution provided a very succinct definition of citizens' rights and liberties but did not indicate what restrictions could be placed on them. For example, article 39 of chapter 4 stated that the freedoms of expression and association were "guaranteed to the citizens". That seemed to mean that such freedoms would be guaranteed to the extent that the ordinary laws guaranteed and protected them. He therefore wished to know whether chapter 4 of the Constitution had binding force or if it was simply a solemn declaration. The Algerian delegation should also explain how chapter 4 related to the relevant articles of the Covenant.

20. While article 45 of the Constitution stated that a person held for questioning had the right to contact his family immediately, the Code of Penal Procedure did not contain such a provision. He wished to know whether article 45 was binding in such cases or whether the Code of Penal Procedure was the only binding legal instrument in such cases.

21. Paragraph 72 of the report stated that treaties ratified by Algeria formed an integral part of domestic law and took precedence over the law. That meant that the Covenant should take precedence over domestic law in Algeria. Since many articles of the Covenant permitted restrictions, he wished to know whether an ordinary law and its provisions would take precedence over an article of the Covenant if the article permitted limitations and restrictions.

22. Referring to article 77 of the Information Act, which prescribed penalties and imprisonment for criticism of Islam, he wished to know why Algerian law considered it necessary to place such a restriction on the freedom of expression.

23. Miss CHANET commended the initial report of Algeria but regretted that it did not provide any information on the states of emergency declared in June 1991 and February 1992.

24. She requested additional information on the general legal framework and the constitutional process that had permitted the establishment of new State institutions following the resignation of President Chadli Bendjedid. She did not have a clear idea of the structure of the State in Algeria and what measures were taken when a president resigned. She also wished to be informed of the constitutional basis for the recent suspension of elections, particularly in relation to article 25 of the Covenant.

25. According to paragraph 17 of the report, the National People's Assembly had the right to meet during a state of emergency. She wished to know whether the Assembly had been allowed to meet during the states of emergency declared in June 1991 and February 1992. Also, had a notification been issued for the proclamation of the state of emergency in February 1992, and had Algeria

(Miss Chanet)

notified the Secretary-General of the rights that had been suspended as a result of the state of emergency? In paragraph 69 of the report Algeria recognized that any exceptional measures taken "to safeguard the independence of the Nation and the institutions of the Republic" must not derogate from the fundamental rights of the human being under article 4, paragraph 2, of the Covenant. However, it appeared that the Constitution did not establish any clearcut limits on the extent of exceptional measures.

26. She inquired whether Algeria's declaration, on 9 February 1992, of a state of emergency for one year was compatible with article 4, paragraph 1, of the Covenant, and whether it was possible to set a time-limit on such measures.

27. According to paragraph 36 of the report, the provisions of the Covenant formed an integral part of Algerian law and could be directly evoked in the courts. She wished to know what remedies were available in cases where a violation of the Covenant did not constitute an infraction under Algerian law. With respect to article 139 of the Constitution, which stated that "judges shall be protected against any form of pressure, interference or manipulation", she requested information on what specific measures were taken to protect judges and how the article was implemented.

28. Article 16 of the Constitution indicated that judges become irremovable only after 10 years of effective service. That provision seemed to establish a link between irremovability and effective service.

29. She requested further information regarding the composition and procedures of military tribunals that tried civilians. She wished to know the number of executions that had taken place over the past year, what kind of recourse was available against a death sentence, including cases where the sentence had been passed by a military tribunal, and the procedure for granting pardon under the current state of emergency.

30. Referring to paragraph 33 of the report, she inquired what the normal time-limit for custody was and whether there had been any changes in that respect under the current state of emergency. She wished to know whether there were any difficulties in carrying out medical examinations of detained persons, particularly during states of emergency. The Committee should be told the reasons for placing people under administrative detention in internment camps, and details should be provided on conditions in such camps as well as the current number of detainees.

31. She requested more information on restrictions on freedom of the press and the right to hold public demonstrations.

32. Paragraph 8 of the report stated that, at the beginning of December 1990, there were 33 approved political parties in Algeria. Since that time, however, the Islamic Salvation Front had been banned and she wished to know how Algeria reconciled that step with article 25 of the Covenant.

33. Mr. DIMITRIJEVIĆ said that the Algerian delegation should explain why Algeria had considered it necessary to declare the recent states of emergency. The report made no reference to factors and difficulties that Algeria encountered in implementing the Covenant. It was extremely important to provide such information since the Government of Algeria had declared the recent states of emergency in response to certain difficulties prevailing in the country. The Algerian delegation should explain how the recent attempt of anti-democratic forces to use the democratic process to come to power was viewed in the context of article 5 of the Covenant. He wished to know what rights had been restricted or derogated from during the states of emergency.

34. Also with respect to states of emergency, he wished to know to what extent effective measures were taken to ensure respect for article 7 of the Covenant. In particular, he wished to know the legal basis for preventing torture and cruel, inhuman or degrading treatment or punishment, and what measures had been taken to punish people who had engaged in such practices.

35. With respect to article 14 of the Covenant, he wished to know the competence of the military courts, both under normal circumstances and under states of emergency. It was questionable whether the procedures of Algerian military courts dealing with offences committed by civilians were in keeping with the provisions of the Covenant. Military courts were composed of a civilian chairman and two military officers, so that a majority of the judges was always on the side of the military.

36. Legal aid was available only to accused persons who had committed crimes punishable by five or more years' imprisonment. In that connection, he wondered whether persons facing prison sentences of less than five years had a right to free legal assistance.

37. Paragraph 171 of the report indicated that Islam was the State religion, although the Christian and Jewish faiths also seemed to enjoy certain privileges. Article 77 of the Information Act provided that anyone who offended Islam or "the other celestial religions" was liable to criminal penalties. He wondered whether "celestial religions" meant revealed religions and, if that was the case, what legal provisions there were with respect to offences against other religions.

38. Referring to article 27 of the Covenant, he wished to know whether Algeria permitted atheists to exercise freedom of expression and whether there had been any cases involving the punishment of atheists. It would be interesting to learn what Algeria's position was with respect to religions other than Islam, Christianity and Judaism, in particular newer religions, such as Baha'ism.

39. He had concerns regarding implementation of article 22 of the Covenant, providing for freedom of association, in the context of the state of emergency. The grounds for dissolution of associations in Algeria included "behaviour contrary to Islamic morals and the values of the revolution of

(Mr. Dimitrijević)

1 November 1954". That provision seemed quite sweeping, and he wondered where such morals and values were defined, as they did not appear to be enshrined in the Constitution. He would welcome further clarifications on the legal basis for dissolving certain parties and associations during the current emergency.

40. More information on the situation of ethnic, religious or linguistic minorities in Algeria under article 27 of the Covenant would be helpful. The report stated that the census was never conducted on the basis of ethnic, religious or linguistic criteria, but on the other hand, Berber culture and language were being fostered and preserved. If no census data existed on that culture, it would be interesting to know how the number of speakers of Berber was determined and where the centres of Berber culture were located. Similiar information on the size of religious minorities would be useful.

41. Mr. NDIAYE said that there was particular concern regarding the state of emergency declared in Algeria because of that country's importance to the international community and to the third world in particular. The new Constitution of 1989 had been an attempt to harmonize and synthesize the aspirations of many sectors of society and opposing groups, but it had been impossible to predict the forces that the democratization process would unleash. Unfortunately, the second round of legislative elections had not taken place, which led to a basic question. He wondered whether, in the name of democracy, it was possible to stop a democratic process, and whether another means, also democratic, could be found to start that process anew. After the resignation of the President, it appeared that the democratic mechanisms provided for in article 84 of the Constitution for responding to a vacancy in the executive office had not been activated. In the case of the resignation of the President of the Republic, the Constitution provided for the President of the National People's Assembly to assume the duty of Head of State until elections could be organized. It would be useful to know whether the relevant sections of the Constitution had simply been suspended, or whether the Government had consulted with various political forces and eminent individuals before deciding on an alternate course of action for filling the vacancy in the executive branch.

42. Since Islam was the State religion of Algeria, it was unclear to him how the Islamic Salvation Front could be considered a threat to democracy. More information would also be welcome on specific derogations from articles of the Covenant during the second state of emergency, especially provisions from which no derogation was permitted under the Covenant.

43. Mr. PRADO VALLEJO said that the Committee was interested in learning how the new principles and institutions for human rights protection in the 1989 Constitution were being applied, as often there was a disparity between the law in itself and its implementation.

44. He would appreciate further details regarding methods of interrogation, provision of medical care and legal representation for persons detained

(Mr. Prado Vallejo)

without due process during the recent states of emergency. More information on the composition and procedures of military tribunals would also be welcome.

45. Reports had been received of mistreatment and torture of detainees, and he would like to know what measures had been taken by the State to investigate such occurrences and punish the individuals responsible. A number of deaths had also occurred during peaceful demonstrations, and further clarification would be useful regarding specific instructions given to police on excessive use of force in such situations.

46. With regard to article 47 of the Constitution, the legal requirements for the right to vote and to be elected should be specified. Article 54, recognizing the right to strike, mentioned that exercise of that right could be prohibited or limited for reasons of national defence and security, and he would like to know exactly what those reasons were.

47. Paragraph 84 of the report mentioned the imposition of the death penalty for economic offences. He would be interested to know what offences under the civil code currently allowed imposition of the death penalty.

48. It was of some concern that the freedom of worship and religion of communities of other faiths besides Islam was protected by the Ministry of Religious Affairs, and not under law. Referring to paragraph 171 of the report, he was curious to know how it could be determined that an offence against religion had occurred, and what constituted an indirect offence.

49. With regard to equal rights for women, the requirement of a dowry when contracting a marriage appeared to discriminate against women. The husband had the right under the law to take more than one wife, and he wondered if a similar right was extended to women.

50. In conclusion, he wished to know what measures had been taken by the Government to promote knowledge of the Covenant and its provisions and what publications, publicity campaigns or educational programmes had been undertaken.

51. Mr. ANDO said that, like the previous speakers, he too was concerned at the situation in Algeria over the past year, and especially at the declaration of a state of emergency. Regrettably, after the Committee had received the State party's report, further incidents had occurred which had cast a shadow over the implementation of the Covenant. At the same time, it was significant that Algeria had ratified the Covenant and had submitted its report; it was to be hoped that the current dialogue would contribute to improving the situation in the country.

52. As mentioned in paragraph 10, article 28 of the Constitution prohibited discrimination on various grounds; the discrepancy between them and the grounds listed in article 2, paragraph 1, and article 26 of the Covenant

(Mr. Ando)

should be clarified. With regard to the decision of the Constitutional Council mentioned in paragraph 18, he would appreciate information on the background of the decision and a statement of its implications for the status of the Covenant. With regard to the constitutionality of international treaties, as referred to in articles 155 and 158 of the Constitution, it would be useful to learn whether there had been any cases in which it had been necessary to abrogate international treaties signed prior to the date on which the Constitution had been promulgated, particularly in the field of human rights. In paragraph 20, the implications of the statement that draft constitutional amendments must not violate "the general principles governing Algerian society" needed clarification.

53. Paragraph 44 referred to seminars held by some political parties on the subject of the relationship between Islam and human rights; he would appreciate knowing whether any problems had been encountered in that regard.

54. According to article 140 of the Constitution, the High Council of the Judiciary was responsible for the appointment and termination of the tenure of judges; however, article 145 provided that the said body was to be chaired by the President of the Republic. It was difficult to understand how the independence of the judiciary could be guaranteed if the body responsible for overseeing it was presided over by the highest-ranking member of the executive branch. Paragraph 19 of the report explained how six of the seven members of the Constitutional Council were appointed or elected; the reporting State should indicate the identity and the means of appointment or election of the seventh member. As to the people's assessors mentioned in article 137 of the Constitution and paragraph 24 of the report, it would be useful to learn who they were, how they were elected or appointed and in what way they assisted judges.

55. With regard to equality of rights for men and women, while legal equality was guaranteed by the Constitution, as mentioned in article 60, he wondered whether it was complete in all spheres. For example, information should be provided on whether aliens who married Algerian citizens could pass on their nationality to their children. In that connection, the Constitution provided only that citizens were equal before the law, while the Covenant referred to all persons. Furthermore, with regard to the status of aliens, paragraph 181 (h) stated that the establishment of foreign associations was subject to prior approval by the Ministry of the Interior, whereas no such approval was required in the case of national associations. He would welcome additional information on the access of aliens to the courts, their status in judicial proceedings and their freedom of expression; for example, it was unclear whether foreign correspondents were on the same footing as members of the national media.

56. Concerning freedom of religion, the Government should indicate whether Islam, the State religion, enjoyed privileges as compared with other religions practised in the country, such as financial subsidies or the inclusion of compulsory religious instruction in schools.

(Mr. Ando)

57. With regard to freedom of expression, it would be interesting to learn whether there had been any cases in which the requirements of foreign policy had limited the exercise of that right, as referred to in paragraph 175. In paragraph 176, the meaning of the term "verification of accuracy" of periodicals needed clarification; it would be useful to know who conducted such reviews and on what basis. Further details on the availability of foreign periodicals would also be welcome.

58. Lastly, concerning the rights of minorities, he wondered whether Berber, which was described in paragraph 220 as being widely spoken in various regions of the country, could be used in criminal proceedings, or whether Berber-speaking defendants required interpreters.

59. Mr. MÜLLERSON noted with satisfaction that Algeria had ratified not only the Covenant but also the Optional Protocol thereto. It was equally commendable that Algeria had not requested the postponement of its report, even though the country was currently experiencing difficulties. Of further significance was the fact that the State party had formally accepted the primacy of international treaties over domestic legislation.

60. He would be grateful for additional information on the current situation; in particular, the Government should explain its decision to cancel the results of the previous elections, as such matters were difficult to judge from a distance. Furthermore, the Committee had received notification of the state of emergency declared in 1991; he wished to know whether notification had also been received in the case of the recent state of emergency, and whether the Constitutional Council had been involved in the decision to declare it. He would also be grateful for an indication of whether the Constitutional Council had ever dealt with the issue of compatibility between domestic laws and international treaties.

61. Article 46 of the Constitution provided that judicial errors should be made good by the State; it would be useful to know which organ of the State was responsible in such instances and what method was applied.

62. Concerning the statement in paragraph 22 that the judicial and other authorities were required to observe Algeria's international commitments, it was unclear whether the courts were required to apply directly the provisions of international treaties and the customary norms of international law in deciding specific cases.

63. The first sentence of paragraph 203 (b) needed clarification particularly the question of who was and who was not in possession of civil and political rights. In the second sentence, the meaning of the phrase "persons whose conduct during the National Liberation Revolution was contrary to the interests of the country" was unclear, as the events referred to had taken place decades earlier. The reporting State should be more specific about the number of persons in that category and the process by which they were placed in it.

64. Mr. FODOR welcomed the opportunity given to the Committee to engage in a dialogue with the Government, especially at a time when Algeria had been obliged to derogate from certain provisions of the Covenant. It was certainly more useful for the Committee to discuss timely concerns than to review them several years later from a historical perspective.

65. Since the Constitution provided that international treaties took precedence over domestic law, the reporting State should clarify what happened when certain legal provisions were found to be incompatible with the Covenant, and whether such a decision was taken by the courts or by the Ministry of Justice. It would also be useful to learn whether a body had been set up to review all existing legislation, or whether that had been left to judicial practice or to the Constitutional Council. In the latter case, he wished to know whether it was only the President of the Republic or the President of the National People's Assembly who could bring matters before the Constitutional Council. In particular, information on whether that body had ever examined the constitutionality of the electoral law would be welcome.

66. He would be grateful for further details on what the Government had done to make the provisions of the Covenant known to the public.

67. With regard to paragraph 54, the reporting State should clarify whether only Algerian citizens could invoke the provisions of international conventions in the courts.

68. Concerning the reference in paragraph 47 to Algeria's solidarity with the peoples fighting against colonialism, apartheid, zionism and any other forms of occupation, it would be interesting to learn whether the Government had modified its position in the light of the recent withdrawal by the General Assembly of its resolution 3379 (XXX) equating zionism with racism.

69. As to the prohibition of discrimination on various grounds, he noted that article 28 of the Constitution omitted some grounds, such as colour and language, which were included in article 2, paragraph 1, of the Covenant. With regard to the prohibition of discrimination against women, additional information should be provided on how that could be reconciled with Algeria's traditional values and patriarchal culture, and on any specific measures adopted by the Government to eliminate discrimination. Statistics on the percentage of women in the work force would provide a better picture of the achievements in that area. As to the statement in paragraph 61 concerning goods acquired by women during marriage, it would be interesting to learn what the law provided with regard to goods acquired outside marriage and whether married women remained under the legal guardianship of their fathers.

70. With regard to the death penalty, he would be grateful if the reporting State could provide an exhaustive list of all offences to which it was applicable. Furthermore, according to recent reports, there had been a number of deaths attributable to the use of excessive force by the police; any data on the measures taken in that regard would be welcome.

(Mr. Fodor)

71. Concerning judicial error, the relevant provision of the Code of Penal Procedure, as set out in paragraph 118, did not appear to coincide precisely with the obligation laid down in article 9, paragraph 5, of the Covenant. He would appreciate further information on the legal requirements for the registration of political parties and the grounds on which requests for registration could be rejected. Lastly, as the second round of elections, originally scheduled for January 1992, had been cancelled, the Government should indicate its future plans in that regard.

The meeting rose at 1.15 p.m.